



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Extending White Slough Water Pollution Control Facility Agricultural Leases

**MEETING DATE:** April 16, 2008

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Adopt a resolution extending the White Slough Water Pollution Control Facility (WSWPCF) agricultural leases for the period January 1, 2009, through December 31, 2013, for agricultural land at WSWPCF and authorizing the City Manager to execute the lease agreements on behalf of the City.

**BACKGROUND INFORMATION:** The City has two agricultural lease parcels at WSWPCF which total approximately 877 acres. Both leases expire on December 31, 2008. The current tenants are Kirschenman Farms (659± acres) and Lima Ranch (218± acres). Farming is the secondary function of the agricultural reuse areas at WSWPCF. The primary function of the farming operations is to distribute treated municipal effluent and industrial discharges (primarily from Pacific Coast Producers) to the reuse areas during the summer months (irrigation season).

The City's new State Regional Water Quality Control Board (SRWQCB) discharge permit adopted November 3, 2007, contains new monitoring and reporting requirements that will modify the farming practices during the remaining period of the existing lease (now through December 31, 2008). The new permit requires better control of biosolids loading rates, along with better monitoring and reporting.

To accomplish this, the tenants are required to keep 350 acres of the 877 total lease acreage planted in corn, which will allow for improved distribution of biosolids over a greater area. The remaining acreage will be planted in alfalfa, which has a longer growing season, to accommodate the longer irrigation season needed for cannery flows. The tenants will also be required to provide the City with monthly detailed planting, irrigation, and harvesting reports. This allows the City to better monitor the field conditions, hydraulic loading rates, nitrogen loading rates, biological oxygen demand (BOD) loading rates, and fixed and total dissolved solids loading rates. This information is required to be submitted monthly to the SRWQCB.

After discussing these new requirements with the current tenants, both have agreed to lease extensions containing the required amendments and both have been very cooperative in exploring creative and cost-effective ways to implement the changes. Additionally, both tenants have performed very well during the current lease period, and staff feels extending the new leases is in the best interest of the City.

Staff recommends Council adopt a resolution extending the WSWPCF agricultural leases for the period of January 1, 2009, through December 31, 2013, for agricultural land at WSWPCF.

**APPROVED:** \_\_\_\_\_  
Blair King, City Manager

**FISCAL IMPACT:** The rent for both leases is proposed to remain at the 2003 lease rate of 20% of gross receipts for the crops grown. Staff has performed an informal market analysis to verify the current lease rate is appropriate for the type of crops grown and the conditions in which the farmers must operate.

Information obtained from the University of California Agricultural Cooperative Extension reflects that lease rates on land where feed and fodder crops are grown typically vary between 15% and 25% of the gross receipts. Based on this information, Staff believes the current lease rate is appropriate.

Over the past four years, revenues generated from the agricultural leases have varied from approximately \$100,000 to \$150,000 per year since Fiscal Year 2004/05. The variation is related to crop production.

**FUNDING AVAILABLE:** Not applicable.

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F. Wally Sandelin  
Public Works Director

Prepared by Del Kerlin, Wastewater Treatment Superintendent

FWS/CES/DK/dsg

Attachments

cc: Wally Sandelin, Public Works Director  
Charles E. Swimley, Jr., Water Services Manager  
Kirschenman Farms  
Lima Ranch

L E A S E  
FOR  
AGRICULTURAL LAND  
at  
White Slough Water Pollution Control Facility

THIS LEASE, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the CITY OF LODI, a municipal corporation, hereinafter called Lessor, and KIRSCHENMEN FARMS hereinafter called Lessee.

W I T N E S S E T H :

1. **PROPERTIES:** That for and in consideration of the rents to be paid, and the covenants to be faithfully kept and performed by said Lessee, said Lessee does hereby lease, hire, and take from said Lessor, those certain properties described as follows:

Those certain properties described in Exhibit A attached hereto, and by this reference made a part hereof. Property to be leased totals 659 acres  $\pm$ .

2. **EXTENSION:** Although the current lease does not expire until December 31, 2008, it is a condition of this extension that Lessee agrees to apply the requirements of this lease extension in the final year of the current lease.
3. **TERM:** The term of this Lease shall be for a period of five (5) years, commencing January 1, 2008, and terminating at midnight on December 31, 2013. In order that the tenants have adequate time to plan their farming operations, bids for the lease of this property after December 31, 2013, will be called for approximately one year before that date.
4. **RENT:** In consideration of said Lease, Lessee agrees to pay to Lessor as rent for the demised premises based on the gross value of crops produced on the properties. The amount paid by Lessee shall be 20% of gross receipts for crops grown, including any deferred payments, credits, stock, or other compensation including crop insurance payments. If a crop is successfully produced but not sold, the value will be determined by similar sales by other tenants or market rates for the crops.

Fallowed acreage shall be assessed a flat fee of \$100.00 per acre in lieu of gross percentage. Planted acreage left unattended shall also be assessed a flat fee of \$100.00 per acre.

Lessee shall maintain adequate records of crop yields and gross receipts, and make such records available to Lessor for purposes of verification.

For the purposes of this lease gross receipts shall mean the total revenue of any sort received by Lessee at sale of crop. No reduction of gross will be allowed for any cost incurred by Lessee due to planting, growing, harvesting, or hauling of crop. Any additional cost incurred by Lessee for services by others in conjunction with the above crop production practices will also not reduce gross receipts.

Methods of verification may include any or all of the following; weigh tickets, sale receipts, and/or a contract for sale between Lessee and Broker. Lessee shall supply copies of weigh scale certification to verify accuracy of weight results. Lessor will be free to contact weigh facilities or purchasing agents from time to time as needed to verify quantities and sale amounts.

Rental payments shall be made on or before June 1<sup>st</sup> of each year for the prior winter rotation crop and on or before December 1<sup>st</sup> of each year for the summer crops and shall be directed to the Public Works Department, 221 West Pine Street, P. O. Box 3006, Lodi, California, 95241-1910, for processing and shall be paid without prior notice or demand.

5. **SECURITY:** Tenant shall post security of \$75,000 to secure its obligations under this agreement. The deposit shall be fully refundable upon Tenant's full satisfaction of the obligations hereunder. In the event Tenant defaults on any of its obligations, Landlord shall be entitled to deduct from the deposit for the full amount of its losses resulting from the default. The security may be in the form of a letter of credit, cash deposit, deed of trust or other form of security in such form and on such terms as is approved by the Lodi City Attorney's Office.
6. **USE:** The properties shall be used solely for the purpose of growing, cultivating, fertilizing, irrigating, and harvesting of agricultural crops while ensuring best farm practices, consistent with the terms of this lease, are maintained. During the term of this Lease it is understood and agreed by the parties hereto that Lessee shall be required to accept industrial wastewater, treated domestic effluent, and biosolids from City's White Slough Water Pollution Control Facility. Lessor will make available all excess domestic effluent, at no cost to the Lessee. It is further understood and agreed by Lessee, that Lessee must comply with all present and future laws, ordinances, rules, and regulations promulgated by any governmental authority of competent jurisdiction regulating the type of crops that can be grown on the properties during the lease term and any extension thereof. Lessee accepts the properties with the full understanding that the California Department of Health Services regulations (Title 22, Division 4), will limit Lessee to growing only fodder, fiber, or seed crops once industrial wastewater, treated domestic effluent, and biosolids are applied on the properties. Further, Lessee shall be permitted to use the properties for agricultural activities consistent with the terms of this Lease and as permitted by all governmental authorities, including but not limited to, the California Department of Health Services. Further, Lessee agrees to manage the irrigation of the properties with industrial wastewater, treated domestic effluent, and biosolids from the White Slough Facility in such a manner that it will not allow the discharge of any runoff to White Slough, other waters of the Delta, or adjacent private or public property, and meet all regulations imposed by all governmental authorities having proper jurisdiction, including but not limited to, the Central Valley Regional Water Quality Control Board. Lessee shall use and occupy said premises in a quiet, lawful, and orderly manner. Lessor and Lessee further agree that they shall permit no hunting, fishing, or public access to any part of the properties, including Lessee.
7. **ACREAGE REQUIREMENTS AND FERTILIZER USE:** Because the primary goal for the leased land is disposal of industrial wastewater, treated domestic effluent, and biosolids, in a manner that meets or exceeds regulatory requirements, it is necessary to define practices which will maximize this goal. To achieve the stated goal on a yearly basis it will henceforth be a requirement of the lease that 350 acres be planted to feed corn. To further maximize this effort a second crop of wheat or oats shall be planted after harvest of the corn. Because there are multiple leased parcels, the portion allotted to each Lessee may be increased or decreased by mutual agreement by tenants to maintain a minimum 350 acres of corn between the Lessees. To manage our goal it will be necessary for Lessee to submit an annual crop plan for each planting cycle along with the necessary harvesting and planting sheets. The plan will include crop type and acreage for each crop. It will also be necessary for Lessee to keep City staff apprised of irrigation and harvesting schedules. To better accomplish this notification, lessor shall install kiosks at several locations that lessee shall use to identify irrigation start and stop times, and harvest schedules for selected fields. Additionally, because loading rates for biosolids are determined by agronomic uptake of nitrogen for the crop, it will be necessary to better coordinate the field loading by ensuring the fields where biosolids are applied are loaded as equally and simultaneously as possible. The City will notify ahead of application days so that the irrigation system is available for this purpose. It will continue to be necessary to prohibit the application of any natural or chemical fertilizers or any other chemical without written approval of the Lessor. Lessor shall employ the services of a licensed agronomist to help City staff and lessee better manage farming practices to meet the desired goals of both parties.

8. **AVAILABILITY OF LESSEE:** Because of the type of operation of the White Slough Water Pollution Control Facility, it is imperative that Lessee or a representative be readily available in case plant personnel must change any plant operation. That representative must be able to understand and speak English. Lessee shall be responsible for keeping the City Public Works Department advised of a current telephone number and contact person(s) who can be reached 7 days a week, 24 hours a day.
9. **REMEDIES ON DEFAULT:** Should Lessee fail to pay any part of the rents herein specified at the times or in the manner provided, or fail to comply with or perform any other of the terms and provisions of the Lease on the part of Lessee to be performed or complied with, then and in that event, Lessor may exercise any and all remedies provided by law or equity by reason of such default, including the right at Lessor's option, of terminating the Lease. In any of such events, Lessor shall be entitled to the immediate possession of said leased premises, and at their option, may enter into and upon said premises without notice to Lessee and exclude Lessee and all persons and all property therefrom, and by process of law or otherwise take and resume possession of said premises. Each and all of Lessor's remedies shall be construed as cumulative and none of them as exclusive of the other or as exclusive of any remedy provided by law or equity.
10. **RELATIONSHIP OF PARTIES:** It is understood and agreed that the relationship between the parties is that of landlord and tenant and not as a party or agent of Lessor. Lessee, or its subtenant, shall carry Worker's Compensation Insurance and observe all laws and regulations applicable to employers. A copy of Worker's Compensation insurance shall be on file in the Public Works Department.
11. **DITCH, ROAD, AND PROPERTY MAINTENANCE:** Lessee shall maintain and pay all costs of maintaining the irrigation lines, ditches, perimeter fences, and all access roads located on the properties. The perimeter fencing required by the State regulatory agencies will be maintained with material supplied by the City. All ditches and banks shall be kept free from weeds and other obstructions and have sufficient capacity to care for a reasonable head of water. In cases where ditches are not in proper condition to receive water, Lessor shall order the ditches cleaned and failure to do so will be sufficient cause for denial of water. Lessee shall further be responsible, at its sole cost and expense, for maintaining and repairing all improvements located on the properties, including but not limited to, wells, canals, drainage ditches, fences, and other improvements of any nature whatsoever located on the demised premises. Lessee will ensure no damage occurs to ground water monitoring wells located in or near farmed properties by tenant or their agents.
12. **DELIVERY OF WATER:** When the water supply and the capacity of the ditch is such that a rotation basis of delivery is necessary, a system of rotation may be utilized at the discretion of Lessor and may be changed in any section at the discretion of the Lessor. Lessor shall have full authority to stop water delivery if needed for plant operation or on account of any violation of the rules and regulations.
13. **WASTE OF WATER:** Any Lessee over irrigating or wasting water on roads, vacant lands or land previously irrigated, either willfully or carelessly or on account of defective or unclean ditches, poor equipment, or unlevelled land to an unreasonable depth, will be refused the use of water until such conditions are remedied to the satisfaction of Lessor.
14. **FLOOD RISK:** Tenant acknowledges that he is fully acquainted with the demised premises, all facilities affecting the demised premises, and the possibility that the leased premises could be flooded from many causes including, without limitation, the following:

- A. Levee overtopping and levee failure due to natural causes such as winds, tides, barometric pressure changes, rainfall or its runoff, earthquakes, levee settlement, and rodents.
- B. Levee overtopping and levee failure due to man-related causes including negligence of Lessor, any reclamation district or improper levee maintenance, flood fighting and/or patrol, dredging, water releases, obstruction of water flows, and water diversions.
- C. Failure of the drainage system due to natural or man-related causes including negligence of Lessor, any reclamation district, and other governmental agency.
- D. Failure to construct, repair, maintain, or operate levees, drainage, or irrigation facilities, or other facilities, whether due to limited funding or otherwise.
- E. Some localized flooding may occur as a result of Lessee being required to accept industrial wastewater, treated domestic effluent, and biosolids.

Tenant hereby expressly assumes the risk of damage arising out of the above and hereby waives the right (including the right on the part of any insurer through subrogation) to make any claim pertaining to the same as against the State of California, the United States, all reclamation districts, the counties, all other agencies of government, and Lessor and their officers, agents, and employees.

- 15. **ASSIGNMENT AND SUBLETTING:** Lessee shall not assign, encumber, convey, or otherwise hypothecate this Lease, in whole or any part, without first obtaining the written consent of Lessor. Lessee shall be permitted to sublet the properties to a responsible person, firm, or corporation, but any such subletting or use by another person, firm, or corporation shall in no way release Lessee from the obligation, conditions, and terms of this Lease. Lessor shall furnish in writing to Lessor the name of any subtenant, and any sublease entered into by Lessee shall incorporate the terms, provisions, and conditions of this Lease.
- 16. **ENTRY BY LESSOR:** Lessor shall have the right at all reasonable times during the term of this Lease to enter said leased premises for the purpose of examining or inspecting the same.
- 17. **REPAIRS:** Lessee shall be solely responsible for all repairs to the properties. Lessee shall notify Lessor, in writing, of any alterations or additions to the leased premises and major alterations or any alteration that would interfere with Lessor's wastewater discharges on the leased premises shall be first approved by Lessor before the same is made. All alterations, additions, or improvements made in, to, or on the demised premises shall, immediately upon the installation thereof, become and be the property of the Lessor and shall remain upon and be surrendered with the premises.

Lessee shall be responsible to Lessor for all damages caused by willful neglect or careless acts and upon his failure to repair such damage after notification by Lessor, such repairs shall be made at his expense by Lessor.

- 18. **ENFORCEMENT OF RULES:** Refusal to comply with the rules and regulations, and the requirements hereof or the interference with the discharge of the duties of Lessor shall be sufficient cause for shutting off the water. Water will not again be furnished until full compliance with all requirements of the rules and regulations or contract agreement.
- 19. **SURRENDER THE PREMISES:** Lessee shall, at the termination of the term hereby created, or upon the earlier termination hereof for any reason, or upon the extension of the term herein set forth, quit and surrender said premises in good order, condition, and repair reasonable wear and tear and act of God or fire excepted.

20. FEES: Lessee shall pay all personal taxes, licenses fees, or other fees or taxes, levied by any governmental agency which may be imposed upon the business of Lessee or its subtenant which are attributable to Lessee's use of the premises.

If any of the above charges are assessed against the real property, and because of said assessment, the Lessor pays the same, which Lessor will have the right to do regardless of the validity of any such levy, the Lessee upon demand will repay to the Lessor all taxes and other assessments so levied against the Lessor which are due by the Lessee.

Lessor shall pay all real estate taxes and fees for special district assessments of the real property.

21. UTILITIES: Lessee agrees to pay, during the term hereof, all utilities of any nature whatsoever used upon said leased premises except for the run-off collection system located on the property. In the event Lessee creates excessive runoff by over irrigation, Lessee may be required to pay the cost of runoff collection.
22. WASTE: Lessee shall not maintain or commit, nor suffer to be maintained or committed, any nuisance or waste in or about said leased premises, nor do or permit anything to be done in or about said premises, nor keep anything therein, which will in any way conflict with any law, ordinance, rule, or regulation affecting the occupancy and use of said premises, which have been or may hereafter be enacted or promulgated by any public authority.
23. MECHANIC'S LIEN: Lessee agrees to keep said premises free from all liens and claims of mechanics, laborers, material suppliers, and others for work done, and material furnished, and Lessee shall not create or suffer to be created any lien or encumbrance on said premises.
24. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE: Lessee agrees to indemnify and hold harmless Lessor from and against all claims of whatever nature arising from any act, omission, or negligence of Lessee or Lessee's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused any person, or to the property of any person, occurring during the term thereof, in or about the demised premises where such accident, damage, or injury, including death, or is claimed to have resulted, from any act or omission on the part of Lessee or Lessee's agents or employees. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney's fees incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof. Lessee agrees to maintain in full force during the term hereof a policy of public liability insurance under which the Lessee is named as insured, and containing an additional named insured endorsement naming City of Lodi, its Elected and Appointed Boards, Commissions, Officers, Agents and Employees as additional insured, and under which the insurer agrees to indemnify and hold Lessee and Lessor harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the demised premises, where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Lessee, or Lessee's agents or employees. The minimum limits of such insurance shall be \$1,000,000.00 (One Million Dollars) per occurrence. In addition to the additional named insured endorsement on Lessee's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for additional insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi and Appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers shall be excess only and not contributing with the coinsurance afforded by this endorsement."

A duplicate or certificate of said public liability and property damage insurance policy containing the above-stated required endorsements shall be delivered to Lessor within ten

(10) days after the issuance and each renewal of said policy. This paragraph, and all other provisions of this Lease, shall apply and be construed as applying to any subtenant of Lessee.

25. **BANKRUPTCY, RECEIVERSHIP, AND INSOLVENCY:** If Lessee should make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or be adjudicated bankrupt or insolvent, or permit a receiver to be appointed to take possession of a substantial portion of its assets or of this leasehold, and such bankruptcy, insolvency, or receivership proceeding shall not be dismissed within ninety (90) days, then Lessor may, without notice or demand, terminate this Lease and forthwith reenter and repossess the properties, and remove all persons therefrom, and under no circumstances shall this Lease be assignable or transferable by operation of law.

26. **EMINENT DOMAIN:** If the whole or any portion of the premises hereby leased shall be taken by any public authority under the power of eminent domain, whether by negotiation or otherwise, then the term of this Lease shall cease as of the date possession is taken by such authority as to that portion taken, and the rental thereafter due or payable shall be reduced for the portion taken at the rental rate per acre then in effect. All damages awarded for such taking under the power of eminent domain, whether for the whole or a part of the leased premises, shall be the property of Lessor. Provided, however, that Lessor shall not be entitled to any award made to Lessee for loss of business, business leasehold improvements, and crops.

27. **ATTORNEY'S FEES:** In each suit brought for the recovery of any rent due hereunder, or for the recovery of the possession of said demised premises, or for the breach, or to restrain the breach, of any of the terms, conditions, or covenants of this Lease, the prevailing party shall be entitled to a reasonable sum as and for attorney's fees therein, the amount of which shall be determined by the court in such suit and added to and become a part of the judgment therein.

28. **WAIVER:** Failure of Lessor to insist upon performance of any of the terms or conditions of this Lease in any one or more instances shall in no event be construed as a waiver or a relinquishment of its right to future performance thereof, and Lessee's obligations to such future performance shall continue in full force and effect. The receipt by Lessor of rent, with the knowledge of the breach of any agreement or condition hereof, shall not be determined to be a waiver of any such breach.

29. **ACCEPTANCE OF LEASEHOLD ESTATE:** Lessee has examined the leased premises, knows the conditions thereof, and accepts possession thereof in their condition.

30. **TERMINATION OF LEASE:**

A. By Lessee. Lessee shall be permitted to terminate this Lease at its option in the event governmental laws, rules, or regulations, including, but not limited to, those promulgated by the California Regional Water Quality Control Board or the California Department of Health Services, prohibit the growing of any crop on the properties. In the event Lessee terminates this Lease as provided above, crop payments shall be due for crops harvested prior to the date of termination.

Lessee shall also be permitted to terminate this Lease for any reason whatsoever if written notice is given to Lessor six (6) months prior to the end of any individual year covered under this lease. Lessee shall be responsible for all crop payments due for the entire calendar year in which such notice is given.

B. By Lessor. Lessor may terminate this lease if it determines, in its sole discretion, that the demised premises are necessary for any City function or any other purpose approved by the City Council. In such cases, the Lessor shall give to the Lessee six (6) months written notice thereof, and crop payments shall be due for crops harvested prior to date of termination.



31. ACCESS: Lessee shall be permitted reasonable access over adjacent City property owned by Lessor for ingress and egress purposes.
32. CONTRACT: This written agreement constitutes the entire contract between the Lessee and Lessor, and no representation or agreement, unless expressed herein, shall be binding on the Lessor or Lessee.
33. BINDING ON HEIRS: This Lease shall include and inure to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto, but nothing in this paragraph contained shall be construed to modify or impair in any manner any of the provisions and restrictions of this Lease relating to the assignment of this Lease, or of any interest therein, or to the subletting or underletting of said leased premises or any part thereof.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease on the date and year first above written.

CITY OF LODI, a municipal corporation  
Hereinabove called "Lessor"

Hereinabove called "Lessee"

By \_\_\_\_\_  
BLAIR KING, City Manager

By \_\_\_\_\_  
KIRSCHENMEN FARMS

\_\_\_\_\_  
RANDY JOHL  
City Clerk

Approved as to Form:

\_\_\_\_\_  
D. STEPHEN SCHWABAUER  
City Attorney



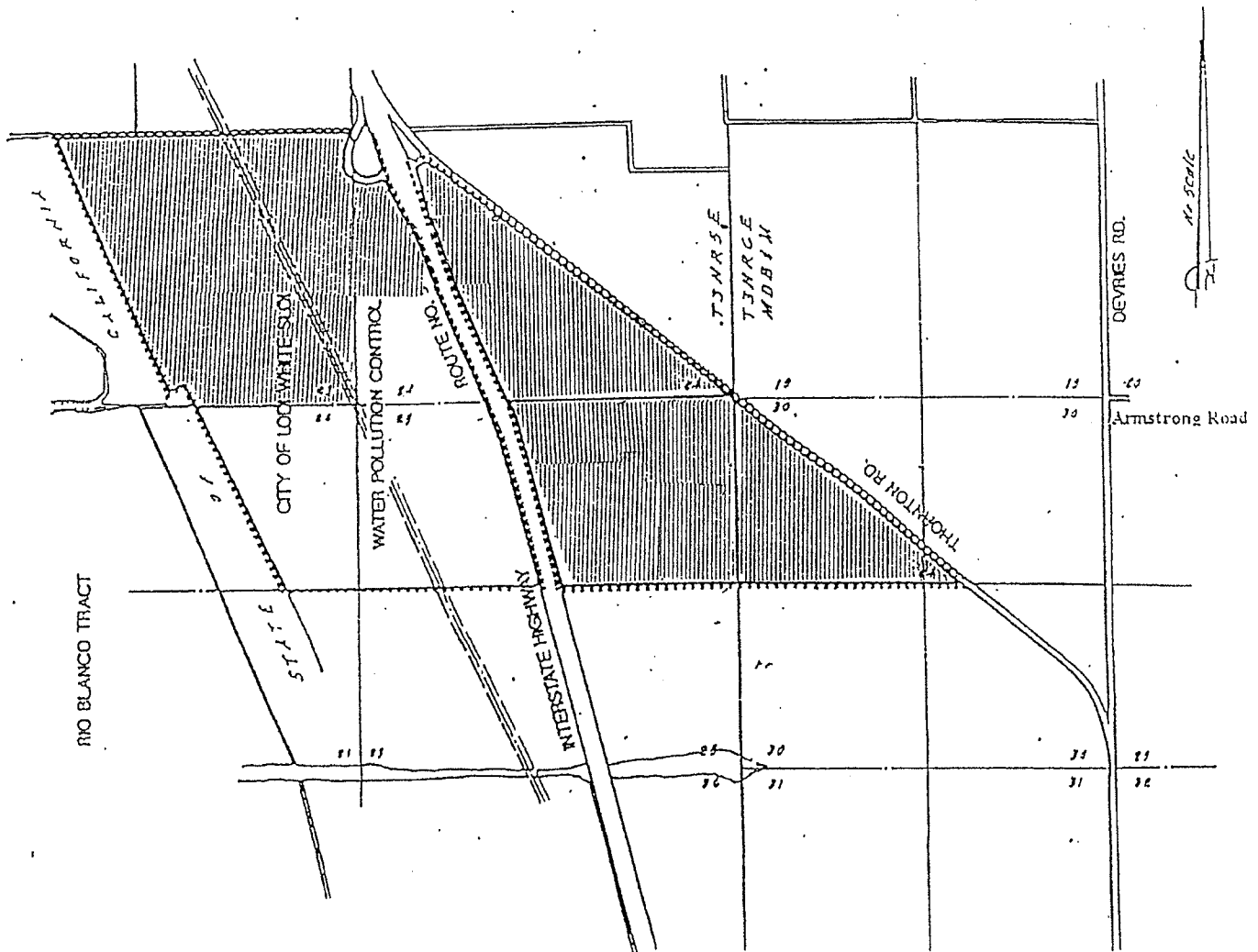


# CITY OF LODI

PUBLIC WORKS DEPARTMENT

## EXHIBIT A

Lease for 659± acres agricultural land at White  
Slough Water Pollution Control Facility



L E A S E  
FOR  
AGRICULTURAL LAND  
at  
White Slough Water Pollution Control Facility

THIS LEASE, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the CITY OF LODI, a municipal corporation, hereinafter called Lessor, and LIMA RANCH hereinafter called Lessee.

W I T N E S S E T H :

1. PROPERTIES: That for and in consideration of the rents to be paid, and the covenants to be faithfully kept and performed by said Lessee, said Lessee does hereby lease, hire, and take from said Lessor, those certain properties described as follows:

Those certain properties described in Exhibit A attached hereto, and by this reference made a part hereof. Property to be leased totals 218 acres  $\pm$ .

2. EXTENSION: Although the current lease does not expire until December 31, 2008, it is a condition of this extension that Lessee agrees to apply the requirements of this lease extension in the final year of the current lease.
3. TERM: The term of this Lease shall be for a period of five (5) years, commencing January 1, 2008, and terminating at midnight on December 31, 2013. In order that the tenants have adequate time to plan their farming operations, bids for the lease of this property after December 31, 2013, will be called for approximately one year before that date.
4. RENT: In consideration of said Lease, Lessee agrees to pay to Lessor as rent for the demised premises based on the gross value of crops produced on the properties. The amount paid by Lessee shall be 20% of gross receipts for crops grown, including any deferred payments, credits, stock, or other compensation including crop insurance payments. If a crop is successfully produced but not sold, the value will be determined by similar sales by other tenants or market rates for the crops.

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7. **ACREAGE REQUIREMENTS AND FERTILIZER USE:** Because the primary goal for the leased land is disposal of industrial wastewater, treated domestic effluent, and biosolids, in a manner that meets or exceeds regulatory requirements, it is necessary to define practices which will maximize this goal. To achieve the stated goal on a yearly basis it will henceforth be a requirement of the lease that 350 acres be planted to feed corn. To further maximize this effort a second crop of wheat or oats shall be planted after harvest of the corn. Because there are multiple leased parcels, the portion allotted to each Lessee may be increased or decreased by mutual agreement by tenants to maintain a minimum 350 acres of corn between the Lessees. To manage our goal it will be necessary for Lessee to submit an annual crop plan for each planting cycle along with the necessary harvesting and planting sheets. The plan will include crop type and acreage for each crop. It will also be necessary for Lessee to keep City staff apprised of irrigation and harvesting schedules. To better accomplish this notification, lessor shall install kiosks at several locations that lessee shall use to identify irrigation start and stop times, and harvest schedules for selected fields. Additionally, because loading rates for biosolids are determined by agronomic uptake of nitrogen for the crop, it will be necessary to better coordinate the field loading by ensuring the fields where biosolids are applied are loaded as equally and simultaneously as possible. The City will notify ahead of application days so that the irrigation system is available for this purpose. It will continue to be necessary to prohibit the application of any natural or chemical fertilizers or any other chemical without written approval of the Lessor. Lessor shall employ the services of a licensed agronomist to help City staff and lessee better manage farming practices to meet the desired goals of both parties.

8. **AVAILABILITY OF LESSEE:** Because of the type of operation of the White Slough Water Pollution Control Facility, it is imperative that Lessee or a representative be readily available in case plant personnel must change any plant operation. That representative must be able to understand and speak English. Lessee shall be responsible for keeping the City Public Works Department advised of a current telephone number and contact person(s) who can be reached 7 days a week, 24 hours a day.
9. **REMEDIES ON DEFAULT:** Should Lessee fail to pay any part of the rents herein specified at the times or in the manner provided, or fail to comply with or perform any other of the terms and provisions of the Lease on the part of Lessee to be performed or complied with, then and in that event, Lessor may exercise any and all remedies provided by law or equity by reason of such default, including the right at Lessor's option, of terminating the Lease. In any of such events, Lessor shall be entitled to the immediate possession of said leased premises, and at their option, may enter into and upon said premises without notice to Lessee and exclude Lessee and all persons and all property therefrom, and by process of law or otherwise take and resume possession of said premises. Each and all of Lessor's remedies shall be construed as cumulative and none of them as exclusive of the other or as exclusive of any remedy provided by law or equity.
10. **RELATIONSHIP OF PARTIES:** It is understood and agreed that the relationship between the parties is that of landlord and tenant and not as a party or agent of Lessor. Lessee, or its subtenant, shall carry Worker's Compensation Insurance and observe all laws and regulations applicable to employers. A copy of Worker's Compensation insurance shall be on file in the Public Works Department.
11. **DITCH, ROAD, AND PROPERTY MAINTENANCE:** Lessee shall maintain and pay all costs of maintaining the irrigation lines, ditches, perimeter fences, and all access roads located on the properties. The perimeter fencing required by the State regulatory agencies will be maintained with material supplied by the City. All ditches and banks shall be kept free from weeds and other obstructions and have sufficient capacity to care for a reasonable head of water. In cases where ditches are not in proper condition to receive water, Lessor shall order the ditches cleaned and failure to do so will be sufficient cause for denial of water. Lessee shall further be responsible, at its sole cost and expense, for maintaining and repairing all improvements located on the properties, including but not limited to, wells, canals, drainage ditches, fences, and other improvements of any nature whatsoever located on the demised premises. Lessee will ensure no damage occurs to ground water monitoring wells located in or near farmed properties by tenant or their agents.
12. **DELIVERY OF WATER:** When the water supply and the capacity of the ditch is such that a rotation basis of delivery is necessary, a system of rotation may be utilized at the discretion of Lessor and may be changed in any section at the discretion of the Lessor. Lessor shall have full authority to stop water delivery if needed for plant operation or on account of any violation of the rules and regulations.
13. **WASTE OF WATER:** Any Lessee over irrigating or wasting water on roads, vacant lands or land previously irrigated, either willfully or carelessly or on account of defective or unclean ditches, poor equipment, or unlevelled land to an unreasonable depth, will be refused the use of water until such conditions are remedied to the satisfaction of Lessor.
14. **FLOOD RISK:** Tenant acknowledges that he is fully acquainted with the demised premises, all facilities affecting the demised premises, and the possibility that the leased premises could be flooded from many causes including, without limitation, the following:

- A. Levee overtopping and levee failure due to natural causes such as winds, tides, barometric pressure changes, rainfall or its runoff, earthquakes, levee settlement, and rodents.
- B. Levee overtopping and levee failure due to man-related causes including negligence of Lessor, any reclamation district or improper levee maintenance, flood fighting and/or patrol, dredging, water releases, obstruction of water flows, and water diversions.
- C. Failure of the drainage system due to natural or man-related causes including negligence of Lessor, any reclamation district, and other governmental agency.
- D. Failure to construct, repair, maintain, or operate levees, drainage, or irrigation facilities, or other facilities, whether due to limited funding or otherwise.
- E. Some localized flooding may occur as a result of Lessee being required to accept industrial wastewater, treated domestic effluent, and biosolids.

Tenant hereby expressly assumes the risk of damage arising out of the above and hereby waives the right (including the right on the part of any insurer through subrogation) to make any claim pertaining to the same as against the State of California, the United States, all reclamation districts, the counties, all other agencies of government, and Lessor and their officers, agents, and employees.

- 15. **ASSIGNMENT AND SUBLETTING:** Lessee shall not assign, encumber, convey, or otherwise hypothecate this Lease, in whole or any part, without first obtaining the written consent of Lessor. Lessee shall be permitted to sublet the properties to a responsible person, firm, or corporation, but any such subletting or use by another person, firm, or corporation shall in no way release Lessee from the obligation, conditions, and terms of this Lease. Lessor shall furnish in writing to Lessor the name of any subtenant, and any sublease entered into by Lessee shall incorporate the terms, provisions, and conditions of this Lease.
- 16. **ENTRY BY LESSOR:** Lessor shall have the right at all reasonable times during the term of this Lease to enter said leased premises for the purpose of examining or inspecting the same.
- 17. **REPAIRS:** Lessee shall be solely responsible for all repairs to the properties. Lessee shall notify Lessor, in writing, of any alterations or additions to the leased premises and major alterations or any alteration that would interfere with Lessor's wastewater discharges on the leased premises shall be first approved by Lessor before the same is made. All alterations, additions, or improvements made in, to, or on the demised premises shall, immediately upon the installation thereof, become and be the property of the Lessor and shall remain upon and be surrendered with the premises.  
  
Lessee shall be responsible to Lessor for all damages caused by willful neglect or careless acts and upon his failure to repair such damage after notification by Lessor, such repairs shall be made at his expense by Lessor.
- 18. **ENFORCEMENT OF RULES:** Refusal to comply with the rules and regulations, and the requirements hereof or the interference with the discharge of the duties of Lessor shall be sufficient cause for shutting off the water. Water will not again be furnished until full compliance with all requirements of the rules and regulations or contract agreement.
- 19. **SURRENDER THE PREMISES:** Lessee shall, at the termination of the term hereby created, or upon the earlier termination hereof for any reason, or upon the extension of the term herein set forth, quit and surrender said premises in good order, condition, and repair reasonable wear and tear and act of God or fire excepted.

20. FEES: Lessee shall pay all personal taxes, licenses fees, or other fees or taxes, levied by any governmental agency which may be imposed upon the business of Lessee or its subtenant which are attributable to Lessee's use of the premises.

If any of the above charges are assessed against the real property, and because of said assessment, the Lessor pays the same, which Lessor will have the right to do regardless of the validity of any such levy, the Lessee upon demand will repay to the Lessor all taxes and other assessments so levied against the Lessor which are due by the Lessee.

Lessor shall pay all real estate taxes and fees for special district assessments of the real property.

21. UTILITIES: Lessee agrees to pay, during the term hereof, all utilities of any nature whatsoever used upon said leased premises except for the run-off collection system located on the property. In the event Lessee creates excessive runoff by over irrigation, Lessee may be required to pay the cost of runoff collection.
22. WASTE: Lessee shall not maintain or commit, nor suffer to be maintained or committed, any nuisance or waste in or about said leased premises, nor do or permit anything to be done in or about said premises, nor keep anything therein, which will in any way conflict with any law, ordinance, rule, or regulation affecting the occupancy and use of said premises, which have been or may hereafter be enacted or promulgated by any public authority.
23. MECHANIC'S LIEN: Lessee agrees to keep said premises free from all liens and claims of mechanics, laborers, material suppliers, and others for work done, and material furnished, and Lessee shall not create or suffer to be created any lien or encumbrance on said premises.
24. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE: Lessee agrees to indemnify and hold harmless Lessor from and against all claims of whatever nature arising from any act, omission, or negligence of Lessee or Lessee's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused any person, or to the property of any person, occurring during the term thereof, in or about the demised premises where such accident, damage, or injury, including death, or is claimed to have resulted, from any act or omission on the part of Lessee or Lessee's agents or employees. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney's fees incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof. Lessee agrees to maintain in full force during the term hereof a policy of public liability insurance under which the Lessee is named as insured, and containing an additional named insured endorsement naming City of Lodi, its Elected and Appointed Boards, Commissions, Officers, Agents and Employees as additional insured, and under which the insurer agrees to indemnify and hold Lessee and Lessor harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the demised premises, where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Lessee, or Lessee's agents or employees. The minimum limits of such insurance shall be \$1,000,000.00 (One Million Dollars) per occurrence. In addition to the additional named insured endorsement on Lessee's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for additional insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi and Appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers shall be excess only and not contributing with the coinsurance afforded by this endorsement."

A duplicate or certificate of said public liability and property damage insurance policy containing the above-stated required endorsements shall be delivered to Lessor within ten (10) days after the issuance and each renewal of said policy. This paragraph, and all other provisions of this Lease, shall apply and be construed as applying to any subtenant of Lessee.

25. **BANKRUPTCY, RECEIVERSHIP, AND INSOLVENCY:** If Lessee should make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or be adjudicated bankrupt or insolvent, or permit a receiver to be appointed to take possession of a substantial portion of its assets or of this leasehold, and such bankruptcy, insolvency, or receivership proceeding shall not be dismissed within ninety (90) days, then Lessor may, without notice or demand, terminate this Lease and forthwith reenter and repossess the properties, and remove all persons therefrom, and under no circumstances shall this Lease be assignable or transferable by operation of law.
26. **EMINENT DOMAIN:** If the whole or any portion of the premises hereby leased shall be taken by any public authority under the power of eminent domain, whether by negotiation or otherwise, then the term of this Lease shall cease as of the date possession is taken by such authority as to that portion taken, and the rental thereafter due or payable shall be reduced for the portion taken at the rental rate per acre then in effect. All damages awarded for such taking under the power of eminent domain, whether for the whole or a part of the leased premises, shall be the property of Lessor. Provided, however, that Lessor shall not be entitled to any award made to Lessee for loss of business, business leasehold improvements, and crops.
27. **ATTORNEY'S FEES:** In each suit brought for the recovery of any rent due hereunder, or for the recovery of the possession of said demised premises, or for the breach, or to restrain the breach, of any of the terms, conditions, or covenants of this Lease, the prevailing party shall be entitled to a reasonable sum as and for attorney's fees therein, the amount of which shall be determined by the court in such suit and added to and become a part of the judgment therein.
28. **WAIVER:** Failure of Lessor to insist upon performance of any of the terms or conditions of this Lease in any one or more instances shall in no event be construed as a waiver or a relinquishment of its right to future performance thereof, and Lessee's obligations to such future performance shall continue in full force and effect. The receipt by Lessor of rent, with the knowledge of the breach of any agreement or condition hereof, shall not be determined to be a waiver of any such breach.
29. **ACCEPTANCE OF LEASEHOLD ESTATE:** Lessee has examined the leased premises, knows the conditions thereof, and accepts possession thereof in their condition.
30. **TERMINATION OF LEASE:**
- A. By Lessee. Lessee shall be permitted to terminate this Lease at its option in the event governmental laws, rules, or regulations, including, but not limited to, those promulgated by the California Regional Water Quality Control Board or the California Department of Health Services, prohibit the growing of any crop on the properties. In the event Lessee terminates this Lease as provided above, crop payments shall be due for crops harvested prior to the date of termination.
- Lessee shall also be permitted to terminate this Lease for any reason whatsoever if written notice is given to Lessor six (6) months prior to the end of any individual year covered under this lease. Lessee shall be responsible for all crop payments due for the entire calendar year in which such notice is given.
- B. By Lessor. Lessor may terminate this lease if it determines, in its sole discretion, that the demised premises are necessary for any City function or any other purpose



approved by the City Council. In such cases, the Lessor shall give to the Lessee six (6) months written notice thereof, and crop payments shall be due for crops harvested prior to date of termination.

31. ACCESS: Lessee shall be permitted reasonable access over adjacent City property owned by Lessor for ingress and egress purposes.
32. CONTRACT: This written agreement constitutes the entire contract between the Lessee and Lessor, and no representation or agreement, unless expressed herein, shall be binding on the Lessor or Lessee.
33. BINDING ON HEIRS: This Lease shall include and inure to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto, but nothing in this paragraph contained shall be construed to modify or impair in any manner any of the provisions and restrictions of this Lease relating to the assignment of this Lease, or of any interest therein, or to the subletting or underletting of said leased premises or any part thereof.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease on the date and year first above written.

CITY OF LODI, a municipal corporation  
Hereinabove called "Lessor"

Hereinabove called "Lessee"

By \_\_\_\_\_  
BLAIR KING, City Manager

By \_\_\_\_\_  
LIMA RANCH

\_\_\_\_\_  
RANDY JOHL  
City Clerk

Approved as to Form:

\_\_\_\_\_  
D. STEPHEN SCHWABAUER  
City Attorney



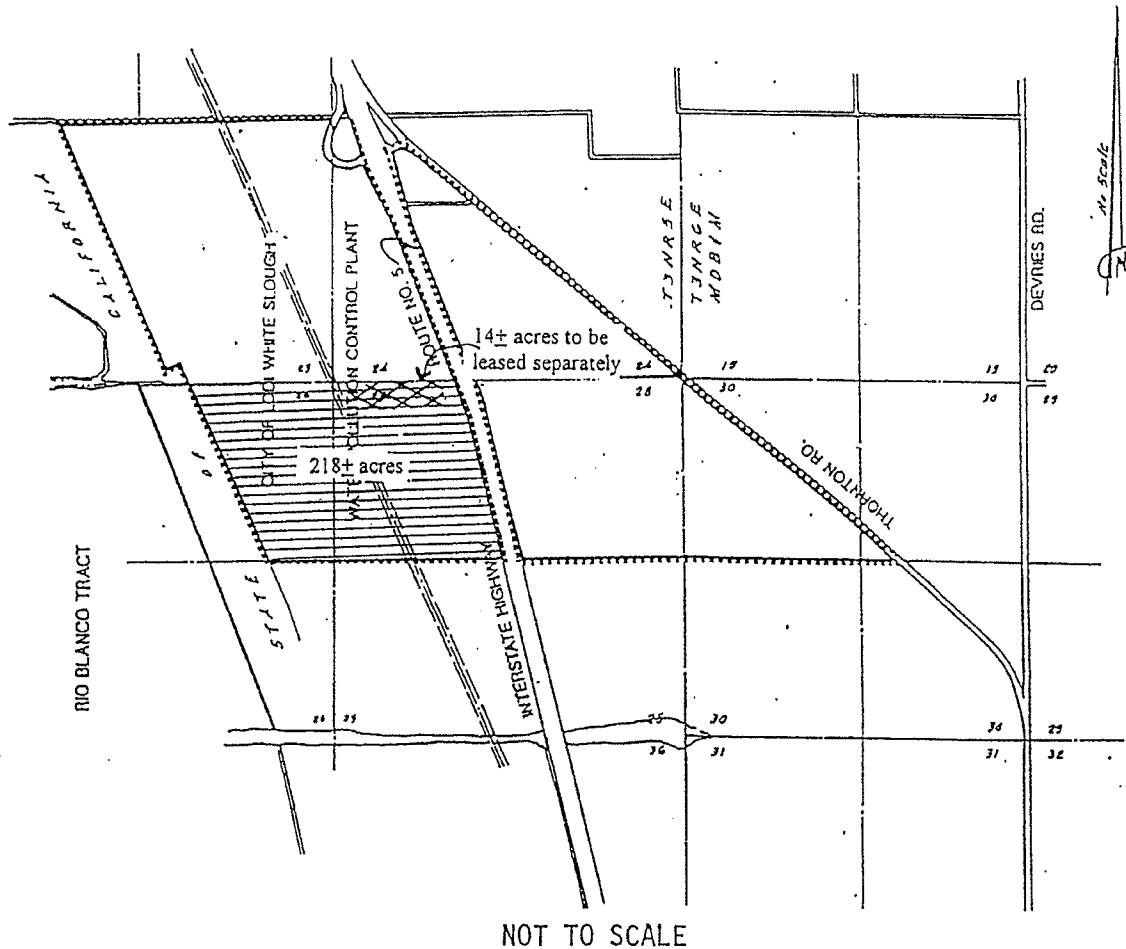


# CITY OF LODI

PUBLIC WORKS DEPARTMENT

## EXHIBIT A

Lease for 219± acres agricultural land  
at White Slough Water Pollution Control  
Facility



The property to be leased is described as that real property situated in the City of Lodi, County of San Joaquin, State of California described as follows:

A portion of the North half of Sections 25 and 26, Township 3 North, Range 6 East, Mount Diablo Base and Meridian, being more particularly described as follows:

Beginning at a point on the northerly line of said Section 25; distant along said line North 89°22'52" West, 3407.31 feet from the Northeast corner of said Section 25, said point being also the northwesterly corner of that parcel of land deeded to the State of California and recorded November 3, 1970 in Book 3455, page 428, San Joaquin County Records; thence along the westerly line of said parcel the following four courses: (1) South 19°12'22" East, 122.94 feet; (2) South 15°29'46" East, 364.22 feet; (3) South 13°21'29" East, 2,225.73 feet; (4) South 13°02'23" East, 29.34 feet to a point in the South line of the North half of said Section 25; thence Westwesterly along the South line of the North half of said Sections 25 and 26 to the southeasterly corner of that parcel of land described as Unit 9 in deed to the State of California and recorded December 14, 1970 in Book 3467, page 349, San Joaquin County Records; thence North 22°22'15" West, along the easterly line of said parcel, 2950.74 feet to a point in the North line of said Section 25; thence Easterly, along the North line of Section 25 and Section 26 to the point of beginning.

Containing 234.7 acres, more or less.

Except therefrom 16± unfarmable acres.

RESOLUTION NO. 2008-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
EXTENDING THE WHITE SLOUGH WATER POLLUTION  
CONTROL FACILITY AGRICULTURAL LEASES

=====

WHEREAS, the City has two agricultural lease parcels at the White Slough Water Pollution Control Facility (WSWPCF) which total approximately 877 acres; and

WHEREAS, the two current tenants' (Kirschenman Farms with 659<sup>±</sup> acres and Lima Ranch with 218<sup>±</sup> acres) leases are set to expire on December 31, 2008; and

WHEREAS, both tenants have performed well during the current lease; and

WHEREAS, the amended leases incorporate several new amendments mandated by the City's new State Regional Water Quality Control Board (SRWQCB) discharge permit adopted November 3, 2007, mandating better control on loading rates of biosolids and improved monitoring and reporting requirements; and

WHEREAS, the tenants are in agreement with the new requirements regarding more comprehensive crop planting, irrigation, and harvesting reporting to enable the City to better monitor field conditions and report to the SRWQCB on a monthly basis.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that the agricultural leases expiring December 31, 2008, with Kirschenman Farm and Lima Ranch be extended for the period January 1, 2009 through December 31, 2013; and

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute the lease agreements on behalf of the City of Lodi.

Dated: April 16, 2008

=====

I hereby certify that Resolution No. 2008-\_\_\_\_\_ was passed and adopted by the Lodi City Council in a regular meeting held April 16, 2008, by the following votes:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk